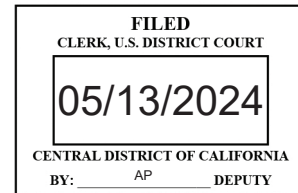


RELATED DDJ



Lynn Macy "In Pro Per"  
P.O. Box #103  
Twin Peaks, Ca. 92391  
Telephone: (909) 744 -8480  
Email: macybuilders@yahoo.com  
PLAINTIFF IN PRO PER

THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA EASTERN DIVISION  
COMPLAINT

Lynn Macy, as an individual,

PLAINTIFF,

vs.

SAN BERNARDINO COUNTY BUILDING  
AND SAFETY DEPARTMENT, a public  
entity.

DEFENDANTS.

Case No.: 5:24-cv-01003-KK(DTB)

COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL FOR:

- (1) Extortion
- (2) Restricting the Use of Land
- (3) Municipal and Supervisorial Liability  
(42 U.S.C. § 1983).
- (4) Intentional Infliction of Emotional  
Distress.

**DEMAND FOR JURY TRIAL**

PLAINTIFF LYNN MACY, through their undersigned counsel, hereby files this  
Complaint against Defendants San Bernardino County Building & Safety  
Department, inclusive (collectively "Defendants"), alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3-4) because Plaintiff assert claims arising under the laws of the United States including 42 U.S.C. §§ 1983 & 1985, the Fourth & Fourteenth Amendments of the United States Constitution. This court has supplemental jurisdiction over state law claims pursuant to 28 USC § 1367 because those claims are so related to PLAINTIFF'S federal claims that the claims form part of the same case and/or controversy pursuant to Article III of the United States Constitution.

- 1 2. Venue is properly founded in this judicial district pursuant to 28 USC §§  
2 1391(b) and (c) in that a substantial part of the events giving rise to the  
3 claims in this action occurred within this District and Defendants are  
4 subject to personal jurisdiction in this district.  
5

6 **PARTIES**

- 7 3. PLAINTIFF LYNN MACY, is a citizen of the State of California, and at all  
8 relevant times herein was a resident in San Bernardino County in the State  
9 of California.  
10 4. Defendant San Bernardino County Building & Safety Department is and at  
11 all times relevant a public entity located in the County of San Bernardino  
12 and existing under the laws of the State of California.

13 **FACTS COMMON TO ALL CAUSES OF ACTION**

- 14 5. Each and every allegation set forth in each and every averment and  
15 allegation of this pleading hereby is incorporated by this reference in  
16 each and every averment and allegation of this pleading.  
17 6. There's an important legal principle that says "ignorance of the law is no  
18 excuse." You can't defend your actions by arguing you didn't know they  
19 were illegal, even if you honestly did not realize you were breaking the  
20 law.

21 **FIRST CAUSE OF ACTION**

22 **Extortion**

23 **(By Plaintiff Against San Bernardino County Building & Safety Department)**

- 24 7. Plaintiff hereby re-alleges and incorporates by this reference, as though  
25 set forth in full, the allegations in paragraph 1 through 6, inclusive.  
26 8. Defendants San Bernardino County Building & Safety Department forced  
27 Plaintiff to pay (Extortion) for a new address for Macyland, which is a  
28

vacant property with no structures/buildings/houses. Plaintiff wanted address to be 1 Macy Way, instead were forced to pay for new address 0 (22390), changes that Plaintiff did not want, for the clear purpose of Extortion; obtaining money by using force, threats of Fines, Fees & Penalties, or fear of economic harm. Macyland is located at **A, B, C: A)** 0 Mojave River Road Cedarpines Park CA 92322, **B)** 22390 Mojave River Road Cedarpines Park CA 92322, **C)** 22437 Mojave River Road Cedarpines Park Ca 92322, (All the same religious place; address changed over the years due to County) & more specifically described as Tract #2341 Cedarpines Highlands #5. APN# 034303101-0000.

9. **2402. Hobbs Act -- Generally:** The Hobbs Act prohibits actual or attempted robbery or extortion affecting interstate or foreign commerce "in any way or degree." Section 1951 also proscribes conspiracy to commit robbery or extortion without reference to the conspiracy statute at 18 U.S.C. § 371. The statutory prohibition of "physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section" is confined to violence for the purpose of committing robbery or extortion. United States v. Franks, 511 F.2d 25, 31 (6th Cir. 1975) (rejecting the view that the statute proscribes all physical violence obstructing, delaying, or affecting commerce as contrasted with violence designed to culminate in robbery or extortion). The **extortion** offense reaches both the obtaining of property "under color of official right" by public officials & the obtaining of property by private actors with the victim's "consent, induced by wrongful use of actual or threatened force, violence, or **fear**," including **fear of economic harm**. See this Manual at 2405 & Evans v. United States, 504 U.S. 255, 265, 112 S.Ct. 1181, 1188 (1992)

(only a private individual's extortion of property by the wrongful use of force, violence, or fear requires that the victim's consent be induced by these means; extortion of property under color of official right does not require that a public official take steps to induce the extortionate payment). San Bernardino County Building & Safety Department forced Macys to pay (**Extortion**) for a Demolition Permit or be threatened with Fines, Fees & Penalties, for a building that was already demoed/destroyed on Macyland before Macys purchased vacant property. County of San Bernardino Building & Safety Department cannot go after land owner, charge & force to get demo permit because someone else years before Macys bought the property, had a house explode & destroyed with nothing even left to demo. (No longer any house/structure/building, is vacant property) Macyland is located at A, B, C: **A) 0 Mojave** River Road Cedarpines Park CA 92322, **B) 22390 Mojave** River Road Cedarpines Park CA 92322, **C) 22437 Mojave** River Road Cedarpines Park Ca 92322, (All the same religious place; address changed over the years due to **County**) & more specifically described as Tract #2341 Cedarpines Highlands #5. APN# 034303101-0000.

10. **2403. Hobbs Act -- Extortion By Force, Violence, Or Fear:** A defendant need not create the fear of injury or harm which he exploits to induce the victim to give up property. See United States v. Duhon, 565 F.2d 345, 349 & 351 (5th Cir. 1978) (offer by employer to pay union official for labor peace held to be "simply planning for **inevitable demand for money**" by the union official under the circumstances); United States v. Gigante, 39 F.3d 42, 49 (2d Cir. 1994), vacated on other grounds & superseded in part on denial of reh'g, 94 F.3d 53 (2d Cir. 1996) (causing some businesses to refuse

operations with the victim sufficiently induced the victim's consent to give up property, consisting of a right to contract freely with other businesses, as long as there were other businesses beyond defendants' control with whom the victim could do business). Moreover, attempted extortion may include an attempt to instill fear in a federal agent conducting a covert investigation or a defendant "made of unusually stern stuff." See *United States v. Gambino*, 566 F.2d 414, 419 (2d Cir. 1977) (argument that FBI agent pretending to be extortion victim could not be placed in fear is not a defense to attempted extortion of the agent); see also *United States v. Ward*, 914 F.2d 1340, 1347 (9th Cir. 1990) (an attempt to instill fear included a **demand for money** from a victim who knew that the defendant was only pretending to be a federal undercover agent when he threatened the victim with prosecution unless **money was paid**).

## **SECOND CAUSE OF ACTION**

### **Restricting the Use of Land**

#### **(By Plaintiff Against San Bernardino County Building & Safety Department)**

11. Plaintiff hereby re-alleges and incorporates by this reference, as though set forth in full, the allegations in paragraph 1 through 10, inclusive.

12. Defendants San Bernardino County Building & Safety Department is **restricting the use** of Plaintiff's religious, nonprofit private property MacyLand (violating Plaintiff's **Constitutional right**), or to remove all restrictions, regulations, zoning, customs, or policies restricting Plaintiff's use of religious, nonprofit private property MacyLand located at: **0** Mojave River Road, Cedarpines Park, CA 92322, **22390** Mojave River Road, Cedarpines Park, CA 92322, **22437** Mojave River Road, Cedarpines Park,

1 Ca 92322. (All the same place, address changed over the years due to  
2 **County**)

3 13. The Takings Clause of the **Fifth Amendment**, provides that “...**nor shall**  
4 **private property be taken for public use, without just compensation.**” A  
5 taking may occur when a government regulation **restricts the use of land**,  
6 even if the government does not invade or occupy the land. The  
7 Supreme Court has defined “public use” broadly, encompassing such  
8 purposes as economic development.  
9

10 14. AGINS v. TIBURON, 447 U.S. 255 (1980): “*The application of a general*  
11 *zoning law to particular property* **effects a taking** *if the ordinance does*  
12 *not substantially advance legitimate state interests, or* **denies an owner**  
13 **economically viable use of his land.**”

14 15. **Filing a Claim for Just Compensation: The Property Ownership Fairness Act**  
15 includes a **simple process to file a claim for compensation**, designed to  
16 allow government & property owners to **negotiate a settlement without**  
17 **having to go to court.** Within three years of the time the restriction on use is  
18 first applied to property, the owner must send a simple letter to the  
19 government requesting just compensation. No clumsy, time-consuming  
20 administrative review process is involved. Instead, the **government has 90**  
21 **days to decide whether to restore the property rights by waiving the land-**  
22 **use restriction or to pay the owner for taking those rights away.** If the  
23 government chooses not to apply the restriction, that waiver can be  
24 passed down to later owners of the property. If the government either  
25 rejects the claim letter or takes no action within three months, the owner  
26 can ask a court to order compensation. & because the government must  
27  
28

1 pay a successful property owner's legal bill, bureaucrats have an  
2 incentive to cooperate & resolve disputes before going to court.  
3 The Act was designed to enable **private citizens to file a claim without**  
4 **having to hire an attorney.** Lowering the costs & burdens of establishing a  
5 claim increases the likelihood of settlement without lengthy & expensive  
6 lawsuits, & helps discourage governments from exploiting property owners  
7 who do not know the law. The Act is therefore a substantial improvement  
8 over the efforts by some states to protect people from regulatory takings,  
9 because most states have not done much to reduce the difficult process  
10 of filing claims. Florida's Harris Act, for example, includes what that state's  
11 courts have called "complex presuit requirements." & the Harris Act  
12 authorizes compensation only for as-applied challenges to governmental  
13 action, meaning that property owners cannot recover for reductions in  
14 property rights that result from across-the-board regulations that diminish  
15 the property values of all owners equally.  
16

17 **16. The Private Property Rights Act: Forcing Federal Regulators to Obey the Bill**

18 **of Rights:** It is time for federal regulators to obey **the Bill of Rights.** This is the  
19 message of the Private Property Rights Act (§. 50), introduced in the  
20 Senate by Steve Symms, the Idaho Republican. Symms's bill would give  
21 teeth to the Fifth Amendment's requirement that no "private property be  
22 taken for public use, without just compensation." Targeted by the bill is the  
23 mounting practice of government regulations to deprive individuals &  
24 businesses of the use of their property without compensating the owners  
25 for the loss of their property. The Symms bill would codify & make  
26 permanent Executive Order 1260, signed by Ronald Reagan in 1988,  
27 which requires federal agencies to consider whether their actions might  
28

1 infringe on property rights and, if they do, to seek alternative ways to  
2 achieve their goals. The Symms bill also would give the President a  
3 legislative weapon to use in his fight to make all federal agencies fully &  
4 consistently put the right of property ahead of the power of bureaucrats.  
5 Just Compensation. The Fifth Amendment's requirement that when the  
6 government takes private property the government must compensate  
7 the owner is referred to interchangeably as the "Just Compensation  
8 Clause," the "Eminent Domain Clause," or the "Takings Clause." Thus, if the  
9 government needs land on which to build a road, it must pay the owner  
10 for the land. The Fifth Amendment also applies to other infringements of  
11 property rights that fall short of total confiscation; on these, however, the  
12 courts have upheld the right to compensation only inconsistently. In  
13 recent years property owners have found the use & enjoyment of their  
14 property more & more restricted by regulators, often in the name of  
15 environmental protection. Thus, for example, individuals have bought land  
16 for houses only to be told that they are no longer allowed to build.  
17 Farmers have bought land for farming only to be told that they are not  
18 allowed to farm because their land must be left in its natural state.  
19 Businesses have been told to shut down mining operations not, as it turns  
20 out, to prevent them from polluting, but because their mining property has  
21 been designated as a "wetland" that must be preserved. Typically, in such  
22 cases, the government has not voluntarily compensated the owners for  
23 their losses. Shift in Court. Since 1987, however, the Supreme Court has  
24 started to recognize that regulation is often used as a substitute for the  
25 power of eminent domain: Instead of buying land outright, the  
26 government often tries to avoid the requirement of paying compensation  
27  
28



1 by simply commanding property owners to use their land in whatever  
2 manner the government wishes. In the face of this practice, however, the  
3 Supreme Court has begun to hold that regulation, as much as outright  
4 confiscation, can be subject to the constitutional requirement of just  
5 compensation. In response to this shift in the Supreme Court's treatment of  
6 regulatory takings, Ronald Reagan in 1988 issued Executive Order 12630,  
7 which requires federal agencies to determine in advance if their actions  
8 may prompt a claim for compensation. The purpose of the Order is  
9 twofold: to protect private property owners from the inadvertent, de facto  
10 confiscation of their property through regulation, & to control & limit the  
11 amount that taxpayers have to pay in just compensation awards to  
12 people whose property has been taken by federal regulation. Such  
13 awards will soon become a major budget item. The total amount of such  
14 outstanding claims is over one billion dollars & growing rapidly. The  
15 Executive Order has been applied diligently by some government  
16 agencies but has been resisted by others. A future President, moreover,  
17 could rescind the order. Symms's bill would make permanent the  
18 protection offered by the Executive Order & require that the Attorney  
19 General certify that each agency is in compliance with the Order's  
20 principles. The Symms legislation could be improved if it required that  
21 compensation be paid out of the budget of the agency at fault in taking  
22 private property without compensation. This would give agencies a strong  
23 incentive to avoid unnecessary takings of the property rights of the  
24 citizens.  
25

26 **17. THE FIFTH AMENDMENT:** The federal government & the states have the  
27 power to condemn & take over land for such public uses as roads, parks,  
28

1 post offices, or military bases. The Fifth Amendment to the U.S. Constitution  
2 stipulates that in such cases, which are **called "takings," the owner must**  
3 **be compensated for the loss of the property.** As the Supreme Court has  
4 explained, "The Fifth Amendment's guarantee that private property shall  
5 not be taken for a public use without just compensation was designed to  
6 bar Government from forcing some people alone to bear public burdens  
7 which, in all fairness & justice, should be borne by the public as a whole. "I  
8 Since the general public thus benefits, the Court has declared, "the public  
9 at large, rather than a single, must bear the burden of an exercise of state  
10 power in the public interest. *Armstrong v. United States*, 364 U.S. 40, 49  
11 (1960). *Agins v. City of Tiburon*, 447 U.S. 255, 260-61 (1980). Although the  
12 Just Compensation Clause in the Fifth Amendment is mainly concerned  
13 with land, it applies to any kind of property. Example: If in a military  
14 emergency the government were to confiscate airplanes or ships from  
15 private owners, or simply require that they be turned over to the  
16 government for the duration of the emergency, the government would  
17 have to compensate the owners. Government can take an interest in  
18 property short of complete ownership, moreover, & still be required to pay  
19 compensation for what it has taken. Thus, for example, where flights of  
20 government aircraft over private property are so low & frequent as to  
21 constitute a direct & immediate interference with the use & enjoyment of  
22 the land, the government has taken a flight easement for which it must  
23 pay damages to the landowner.  
24

25 **18. REGULATORY TAKINGS:** The government also takes property rights by  
26 imposing restrictions on the use of property. Suppose, for example, the  
27 government wants to preserve a forest or a wetland in its natural  
28

1 condition, either for recreational use or for a wildlife refuge. If the  
2 government were to condemn the land outright, there would be no  
3 question about its obligation to compensate the landowner. Yet, suppose  
4 further that the government decides to leave legal title to the land with its  
5 private owner & passes a regulation prohibiting the owner from  
6 developing the land, or from farming it, or from doing anything else that  
7 changes the land's natural state. In this case the government would be  
8 compelling the private landowner to devote the land to whatever use the  
9 government desires. In effect, the government here takes away from the  
10 owner the right to use the land. The private owner of the land would be  
11 owner in name only; the effective owner would be the, government,  
12 although in almost all instances the private owner would still be liable for  
13 the payment of property taxes on the land. This would be an attempt to  
14 circumvent the Fifth Amendment & to achieve the same ends as would  
15 out- right condemnation, but without paying compensation. Common  
16 Law Rights. Not all regulations, of course, infringe on private property  
17 rights. Under the common law of property & tort, a landowner's property  
18 rights are defined & limited by the property rights of his neighbors. If a  
19 regulation merely prevents someone from engaging in activities that  
20 would violate the rights of others under the common law of nuisance or  
21 trespass, 4 such as polluting a river that runs through a neighbor's land,  
22 then the landowner has no right to compensation, even though the value  
23 of the landowner's land may be diminished as a result of the prohibition.  
24 This is because the landowner has no right to engage 3 United States v.  
25 Causby, 328 U.S. 256, 267 (1946). common law kept clear the important  
26 distinction between inflicting a harm & withdrawing or denying a benefit.  
27  
28

1 In general, only physical invasions counted as injuries & could give rise to a  
2 cause of action. See Richard A. Epstein, *Takings: Private Property & the*  
3 *Power of Eminent Domain* (Cambridge, Mass.: Harvard University Press,  
4 1985), pp. 107-125. in such activities to begin with. Regulations in such  
5 cases actually would protect private property rights. The Easement  
6 Option. By contrast, if a particular activity would not violate the property  
7 rights of others as defined under the common law of trespass or nuisance  
8 & would not give others any legal ground to sue, then a landowner has  
9 the right to engage in the activity on his or her own land. If a neighbor  
10 wants to prevent the landowner from engaging in some activity that does  
11 not violate the neighbor's property rights, the neighbor must pay the  
12 landowner to abstain from the activity; & if the neighbor wants to stop the  
13 activity permanently, he or she must purchase an easement from the  
14 landowner. This means that any regulation that prevents people from  
15 engaging in activities on their land that do not violate the property rights  
16 of others abridges the property rights of the landowners whose activities  
17 are restricted. Specifically, such a regulation takes away some of the  
18 landowners' rights in the use & enjoyment of their land, in effect taking an  
19 easement that should have been theirs to sell. Even if many other  
20 desirable uses are still permitted to the landowners, the regulation is a  
21 partial taking. As such, the landowners deserve to be compensated for  
22 whatever property rights they have lost. **COMPUTING COMPENSATION:**  
23 Whenever a regulation takes away private property rights, the proper  
24 measure of compensation is the difference between the value of the  
25 property with & without the regulation; this difference is the value of the  
26 easement the government has taken. Of course, if the property is worth  
27  
28

1 just as much with the regulation as it is without it, then no loss in value has  
2 been caused, & no compensation is owed. Similarly, some government  
3 actions may reduce the value of land without taking away property rights,  
4 & hence do not give rise to an obligation to compensate. Example: A  
5 decision to close an exit along a particular highway, or to build a new  
6 highway someplace else, may diminish the value of hotels & restaurants  
7 along the original highway. If the landowners' property rights in the use of  
8 their land have been left fully intact, however, then they are not entitled  
9 to compensation out of taxpayer funds. The mere fact that a regulation  
10 amounts to a taking does not mean that the government cannot go  
11 forward with the planned regulation. It simply means that the government  
12 must pay compensation in order to do so. The only issue properly involved  
13 in regulatory takings cases under the Fifth Amendment is the right to  
14 compensation, not the validity of the regulations. 5 See, eg., Office of  
15 Legal Policy, U.S. Department of Justice, Economic Liberties Protected by  
16 the Constitution, March 16, 1988, pp. 7-11, 32.6 An easement is a right over  
17 the property of another. An affirmative easement is a right of use, such as  
18 a right of way allowing one to pass over the land of another to access a  
19 road or a beach, or a right to discharge water onto neighboring land. A  
20 negative easement is a restriction on the use of land by its owner,  
21 prohibiting him from doing something which would otherwise be lawful. A  
22 negative easement may also be called a "restrictive covenant" or a  
23 "negative servitude." Black's Law Dictionary, Fifth Edition (St. Paul, Minn.-  
24 West Publishing Company, 1979). pp. 457-58, 1182, 1229.

25  
26 **19. PROBLEMS IN THE CASE LAW:** Although the Supreme Court has recognized  
27 for at least 70 years that regulations can constitute a taking of private  
28

1 property for public use, it has awarded compensation only rarely. Often  
2 the Court found procedural or technical reasons to avoid ruling on  
3 regulatory taking claims. In many cases, the Court has denied  
4 compensation on the ground that the regulation is an exercise of the  
5 "police power" of the federal government or of the state governments,  
6 even though the Fifth Amendment contains no "police powers exception."  
7 Police power originally referred only to government action that sought to  
8 guard against genuine threats to health, safety, or property. Examples of  
9 this might include zoning laws that ban toxic waste dumps or nuclear  
10 reactors from residential areas. Over the years, however, the term "police  
11 power" has been expanded to cover virtually any government action. As  
12 a result, any action that is for a public use or purpose usually constitutes  
13 an exercise of the police power in the eyes of the court. In cases in which  
14 the plaintiff seeks to invalidate a regulation, the "police power" doctrine  
15 can be appropriate. But it is not appropriate in cases where the plaintiff is  
16 merely seeking compensation. The fact that a regulation that takes  
17 private property rights may fall within the police power, as that power has  
18 come to be defined by the courts, only suffices to show that the  
19 regulation is consistent with the Fifth Amendment's requirement that  
20 takings be for public use; it cannot eliminate the requirement that just  
21 compensation be paid. Before it clarified matters in 1987, the Supreme  
22 Court often acted as though the issue before it was whether a regulation  
23 was valid, when in fact the proper constitutional issue was whether a  
24 constitutionally valid regulation nonetheless required payment of just  
25 compensation. Confusing the issue, the Supreme Court also has held  
26 sometimes that a regulation is not a taking of property unless the  
27  
28

1 regulation leaves the property owner with no remaining "economically  
2 viable use" of his property. This has meant *Pennsylvania Coal Co. v.*  
3 *Mahon*. 260 U.S. 393 (1922). The Court considered but rejected a  
4 regulatory claim some 35 years earlier in *Mugler v. Kansas*, 123 U.S. 623  
5 (1887). For examples of regulations that have been upheld on "police  
6 power" grounds, see Office of Legal Policy, *op. cit.*, p. 35; Epstein, *op. cit.*,  
7 pp. 112- 15, 121- 25, 130- 34, 140- 41.<sup>9</sup> For example, in *Village of Euclid v.*  
8 *Ambler Realty Co.*, 272 U.S. 365 (1926), the first case to uphold zoning. a  
9 constitutional challenge, the plaintiff did not even seek just compensation  
10 under the Fifth amendment in his appeal before the Supreme Court  
11 (although he had sought just compensation in the courts below), but  
12 instead merely sought an injunction against enforcement of the zoning  
13 ordinance on the ground that it took his property without due process of  
14 law, in violation of the Fourteenth Amendment. <sup>10</sup> See *Keystone*  
15 *Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 491 n. 20 (1987). <sup>11</sup>  
16 E.g., *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); *United States v.*  
17 *Riverside Bayview Homes, Inc.*, 474 U.S. 121, 127 (1985). Other cases have  
18 explicitly or implicitly rejected this view. E.g., *Pennsylvania Coal Co. v.*  
19 *Mahon*, 260 U.S. 393 (1922); *Loretto v. Teleprompter Manhattan CATV*  
20 *Corp.*, 458 U.S. 419 (1982).<sup>7</sup> The Court has never specified just how  
21 remunerative a remaining use must be in order to count as "economically  
22 viable." That a regulation must render the affected property essentially  
23 worthless before the Supreme Court will recognize a taking & award  
24 compensation. In these cases, the Court seems to have confused the  
25 issue of whether a taking has occurred with the issue of how much should  
26 be paid as compensation. Obviously, if a regulation leaves a property  
27  
28

1 owner with some remaining "economically viable use" of his property, then  
2 the owner is not entitled to receive the full pre-regulation value of his  
3 property as compensation. The owner is entitled, however, to  
4 compensation for the drop in value resulting from the regulation,  
5 regardless of whether the property's remaining value is great or small, so  
6 long as it is less than the pre-regulation value. There is a middle ground  
7 between paying the full value of the affected property as compensation  
8 & paying nothing. This middle ground consists of paying the value not of  
9 the property in its entirety, but of the easement that defacto has been  
10 taken.  
11

12 **20. REVERSING THE TREND:** In 1987 the Supreme Court's treatment of the Fifth  
13 Amendment's Just Compensation Clause began to change significantly.  
14 First, the Court made clear that the "police power" doctrine, which it often  
15 had used to uphold the validity of statutes, does not apply to takings  
16 claims brought under the Fifth Amendment, & hence does not constitute  
17 an exception to the Just Compensation Clause. The Court also explicitly  
18 rejected the notion that the only remedy for a regulatory taking is  
19 invalidation of the regulation, making clear that compensation is an  
20 appropriate remedy even for a partial or temporary taking. The Court  
21 further explicitly recognized that easements are a form of partial taking of  
22 property that can arise in the context of regulation or a permit-  
23 application process. Finally, the Court explicitly rejected the notion that  
24 "economically viable use" of a landowner's remaining property rights will  
25 always necessarily bar an award of just compensation for an easement  
26 that was taken. See *Keystone Bituminous Coal Assn v. DeBenedictis*, 480  
27 U.S. 470, 491 n. 20 (1987). When the government formally seeks to  
28



1 condemn a piece of land, compelling the owner to sell, it institutes an  
2 eminent domain proceeding. When a landowner whose land has been  
3 invaded or restricted by government, but who has retained legal title in his  
4 land due to the government's failure to invoke the power of eminent  
5 domain, wishes to obtain compensation by compelling the government  
6 to buy the land (or at least an easement therein), he institutes an inverse  
7 condemnation proceeding. *First English Evangelical Lutheran Church of*  
8 *Glendale v. County of Los Angeles*, 482 U.S. 304 (1987). *First English* dealt  
9 with a temporary taking, but the underlying principle is equally applicable  
10 to permanent takings of partial interests in property. *Nollan v. California*  
11 *Coastal Comm'n*, 483 U.S. 825 (1987). In *Nollan*, the Court found a taking  
12 where the California Coastal Commission refused to grant a building  
13 permit to owners of beachfront property unless they agreed to convey to  
14 the government an easement for public access to the beach over their  
15 land. *Nollan*, 483 U.S. at 830, 834-37. See also *Loretto v. Teleprompter*  
16 *Manhattan CAW Corp.*, 458 U.S. 419 (1982). Both of these cases involved  
17 regulatory actions requiring landowners to submit to physical invasions of  
18 their land or buildings by others. However, the principle of providing partial  
19 compensation for a partial taking should apply regardless of the nature of  
20 the easement taken. These rulings all made it easier for landowners whose  
21 property rights are taken by regulation to obtain just compensation,  
22 prompting an attorney with the Congressional Research Service to  
23 proclaim the emergence of "a court trend supporting increased  
24 protection of private property against government controls." This trend  
25 appears likely to continue. The Supreme Court late last year agreed to  
26 hear two cases that will give an opportunity to strengthen Fifth  
27  
28

1 Amendment protections of private property. The more widely publicized  
2 of the two involves a South Carolina law that prohibits new building on  
3 ocean front property. In this case, a man had bought two beachfront lots  
4 in 1986 for a total of \$975,000, planning to build a house for his family on  
5 one lot & to build a house to sell on the other lot. Two years later, South  
6 Carolina passed a law prohibiting new building near the beach. This law  
7 has prevented the man from building a house on his land even though  
8 such a house would pose no threat to his neighbors & would be no closer  
9 to the beach than many other nearby lots in the same development,  
10 including those on either side of his, that were built before the 1988 law  
11 was passed. As a result of the law, the two lots have been rendered  
12 virtually worthless. The fact that the Supreme Court has accepted the two  
13 cases leads many observers to predict that the Court will reinvigorate the  
14 constitutional right to just compensation. M Substantial Awards. The trend  
15 toward granting compensation for regulatory takings also has been  
16 reflected in the United States Claims Court, the special federal court in  
17 Washington, D.C., that hears all just compensation claims against the  
18 federal government. In 1990, for example, for the first time ever, the  
19 Claims Court held that two landowners who had been denied permits  
20 under the federal Clean Water Act to use their land in various ways  
21 because the government had classified the land as a "wetland" were  
22 entitled to just compensation because the government failed to prove  
23 that the substances that would have been discharged into the wetlands  
24 would have lowered water quality. Claims Court awarded the respective  
25 Indowners over \$1 million dollars in one case LZ & over \$ 2.6 million in  
26 another, specifically basing its decisions on the distinction between 137  
27  
28

1 Cong. Rec. S 684 (daily edition, January 14, 1991) (statement of Senator  
2 Symms) (the identities of the CRS attorney & the publication quoted are  
3 not provided). The Court heard oral arguments in both cases earlier this  
4 year. *Lucas v. South Carolina Coastal Council*, 112 S. CL 436 (cert.  
5 granted Nov. 18, 1991) (No. 91- 453). The other Fifth Amendment just  
6 compensation case that the Court has agreed to hear involves a  
7 challenge by the owner of a mobile-home park in Escondido, California to  
8 a local rent control ordinance. *Yee v. City of Escondido*, 112 S. CL 294  
9 (cert. granted October 15, 1991) (No. 90-1947). In the vast majority of  
10 cases under the Clean Water Act, the decision to deny a landowner a  
11 permit to fill in a wetland has nothing to do with any polluting properties of  
12 the substance that would be used to fill the wetland; often this substance  
13 consists simply of dirt taken from one pan of the wetland & deposited  
14 onto another. See William G. Laffer 111, "Protecting Ecologically Valuable  
15 Wetlands without Destroying Property Rights," Heritage Foundation  
16 Backgrounder No. 840, July 15, 1991. *22 Florida Rock Industries v. United*  
17 *States*, 21 Cl. Ct. 161 (1990) (involving the mining of limestone). This case is  
18 now on appeal before the U.S. Court of Appeals for the Federal Circuit.  
19 *Love ladies Harbor, Inc. v. United States*, 21 Cl. Ct. 153 (1990) (involving  
20 the building of houses). Mis case is tortious & nontortious uses of land. In  
21 each case, it was clear that the decision by the Army Corps of Engineers  
22 to deny a permit under the Clean Water Act had nothing to do with the  
23 prevention of water pollution, but instead was motivated purely by a  
24 desire to preserve the wetlands in question as wetlands. Therefore, the  
25 Corps of Engineers was really confiscating an easement on the  
26 landowners' land, taking away some or all of their development rights.  
27  
28

1 While these two cases are on appeal, there is evidence that higher courts  
2 will side with property owners. In a bellwether case, the Claims Court in  
3 1989 awarded over \$150 million to a company that had been prohibited  
4 by the Department of the Interior from mining coal on its own land. The  
5 Court of Appeals last year affirmed the decision, & the Supreme Court  
6 declined to take the government's appeal, thereby allowing the lower  
7 court decisions to stand. The Supreme Court's decision not to review the  
8 lower courts' rulings in this case is widely viewed as solid evidence that it  
9 will decide the cases currently before it in favor of justly compensating the  
10 landowners.  
11

12 **21. PAYING FOR REGULATORY TAKINGS:** The increased ability of property  
13 owners to secure just compensation when their property rights are taken  
14 by regulations means that the government, & hence the taxpayers, can  
15 expect to pay more in coming years for actions that restrict property  
16 rights. As a consequence of the court rulings of the past five years, & of  
17 the explosive growth in regulation over the past twenty years, the number  
18 of takings claims filed against the government, the frequency with which  
19 property owners seeking just compensation win, & the average dollar  
20 amount awarded to successful claimants all have increased. Consider the  
21 following: Over 52 cases alleging the taking of property & seeking  
22 compensation were filed with the Claims Court last year, the most in at  
23 least a decade, & possibly the most ever. Nearly 200 takings cases are  
24 pending in the Claims Court. [The total compensation that the U.S. would  
25 have to pay if those seeking now on appeal before the U.S. Court of  
26 Appeals for the Federal Circuit.] See *Florida Rock Industries*, 21 Cl. CL at 16  
27 6-68. The only damage that is done when a wetland is filled with  
28

1 chemically harmless material is to the landowner's own property, the  
2 wetland; there is no physical invasion of anyone else's land or water such  
3 as would give rise to a common-law nuisance action. See Epstein, op. cit.,  
4 p. 123. 25 Whitney Benefits, Inc. v. United States, 18 Cl. Ct. 394 (1989),  
5 modified, 20 Cl. Ct. 324 (1990), afd, 926 F. 2d 1169 (Fed. Cir.), cert. denied,  
6 112 S. Ct. 406 (1991). eg., Moore, "Showdown on Property Rights," National  
7 Journal, November 30, 1991. p. 2940; "Environment Laws Face a Stiff Test  
8 from Landowners," The New York Times, January 20, 1992, p. A1. 27 Ibid. 28  
9 Ibid. redress were to win & receive the full amount that they are seeking is  
10 well over \$1 billion. Although the United States surely will win & thereby  
11 avoid paying compensation in many of these cases, the frequency with  
12 which property owners seeking just compensation win has risen sharply in  
13 recent years. Property owners won more than half of all regulatory taking  
14 cases decided by the federal courts in 1990, the most recent year for  
15 which figures are available. In contrast, the federal government wins nine  
16 out of ten times in other areas of the law. The growth in federal regulation  
17 in the past three years, & the trend in the courts toward protecting private  
18 property owners, means that the government can expect to pay more in  
19 the future to compensate for regulatory takings.  
20

21 **22. EXECUTIVE ORDER 12630:** On March 15, 1988, in response to the Supreme  
22 Court's 1987 takings decisions & the perceived increase in the likelihood of  
23 the federal government having to pay increased just compensation  
24 awards, Ronald Reagan issued an Executive Order dealing with  
25 Government Actions & Interference With Constitutionally '29 Protected  
26 Property Rights.' This detailed Executive Order basically requires each  
27 department or agency in the Executive Branch: to consider in advance  
28

1 whether any contemplated action might, under the Supreme Court's  
2 case law as it stands at the time of the agency's or department's  
3 determination, be a taking of private property, & hence lead to an  
4 eventual judgment against the U.S. that must be paid by the Treasury; to  
5 estimate the potential cost to the federal government of any  
6 contemplated action regulating the use of private property, in the event  
7 that a court later determines that the action constituted a taking; to look  
8 for alternatives that would achieve the same ends but would not involve  
9 takings or would impose less on private property; X to decide in advance  
10 whether a particular action that may result in a taking is worth what it is  
11 likely to cost; & X to set regulatory priorities. The Executive Order also gives  
12 the departments & agencies detailed & specific instructions on how to  
13 minimize the burdens imposed on private property & the resulting liabilities  
14 imposed on the Treasury. These instructions include: X avoiding undue  
15 delays in granting or denying permits, & in making other decisions  
16 affecting private property; 29 Exec. Order No. 12630. 53 Fed. Reg. 88 59  
17 (Mh 18, 1988). Design that permits are granted or denied based on the  
18 same standard; ensuring that restrictions imposed on the use of private  
19 property are not disproportionate to the contribution of the restricted uses  
20 to the overall problem that the restrictions are imposed to redress. The  
21 purpose of all these measures is to avoid taking private property  
22 inadvertently, & thereby to avoid incurring unanticipated costs to the  
23 taxpayers. Executive Order 12630 does not add to or alter the Fifth  
24 Amendment's requirement that just compensation be paid, the  
25 probability that those landowners whose property is taken will be paid, or  
26 the amount that they will recover if they are paid. It simply requires  
27  
28

1 Executive Branch agencies & departments to anticipate the potential  
2 fiscal consequences of their actions. Given the recent changes in the  
3 Supreme Court's standards for awarding just compensation, if federal  
4 officials fail to conduct such an inquiry before acting, they run a  
5 significant risk that the federal government will get stuck with an  
6 unexpected bill several years later. This also would mean that the  
7 government could end up being compelled to pay for properties that it  
8 would not have chosen to buy if it had thought about its priorities in  
9 advance. Thus, the Executive Order is really just a **"look before you leap"**  
10 **provision designed primarily to protect the taxpayers.** It mainly is a  
11 budgetary tool, a device for controlling spending, paying Costs of  
12 Regulation. Yet, the **Executive Order also protects property owners.** Since  
13 regulators will be forced to refrain from taking actions that they cannot  
14 afford to pay for, many regulatory takings of private property will be  
15 deterred. Regulators no longer will be able to treat private property as a  
16 free good, usable without limit & without cost. Instead, they will have to  
17 decide how much regulation they can afford. Thus, even though the  
18 Executive Order does not affect the ability of those whose property is  
19 taken to obtain compensation, it will still protect landowners. [After all,  
20 landowners who have their property taken without their consent & who  
21 receive court-determined compensation?] I most always would prefer to  
22 forego the compensation & keep their land. There are two reasons why  
23 this is so. First, if the compensation provided were worth as much in the  
24 eyes of the land- owner as the property taken, the landowner would sell  
25 voluntarily, & the government would gain nothing by taking rather than  
26 buying. Second, compensation is risky & uncertain, & difficult & expensive  
27  
28

1 to seek & obtain. Therefore, requirement has been violated often in the  
2 past. The Army Corps of Engineers, for example, routinely abuses its  
3 enforcement authority under the Clean Water Act, which is purely an anti-  
4 pollution statute, by granting permits for discharges of materials that pose  
5 no threat to water quality only on the condition that the landowner set  
6 aside land for wildlife protection at his own expense. Presumably even  
7 then they would still be entitled to receive compensation for any  
8 temporary taking that had occurred. However, under the Uniform  
9 Relocation Assistance & Real Property Acquisition Policies Act of 1970. 42  
10 although court-determined compensation is better than nothing,  
11 landowners generally would be better off if their land had not been taken  
12 in the first place.  
13

14 **23. BEYOND THE EXECUTIVE ORDER: THE NEED FOR A STATUTE:** Although the  
15 Executive Order is a major step toward protecting private property rights,  
16 it lacks the force of law. Officers & employees of the Executive Branch  
17 have no statutory obligation to comply with the order. The president,  
18 moreover, may rescind the order at any time. Explains Senator Malcolm  
19 Wallop, the Wyoming Republican: But the order is not without  
20 shortcomings. It has no teeth. Without the possibility of judicial review or  
21 the requirement of disclosure, the executive branch can ignore the order  
22 with impunity. Moreover, as with all executive orders, it can be withdrawn  
23 on a whim. To date, some parts of the Executive Branch have been more  
24 diligent & enthusiastic in complying with the Executive Order than others.  
25 Regulators in the EPA, for example, have resist V. the Executive Order  
26 because they view it as a threat to their ability to regulate. In practice, the  
27 easiest way to circumvent the Executive Order is routinely to find "no  
28



1 takings implications" when performing the "Takings Implication Assessment"  
2 required by the Attorney General's guidelines for implementing the  
3 Executive Order. Existing Supreme Court & lower court pre- cedents are  
4 sufficiently open-ended to allow such a conclusion to be reached in  
5 many instances without an obvious breach of good faith. The Executive  
6 Order, meanwhile, does not limit the government's ability to regulate. The  
7 Takings Clause & the Executive Order allow regulation, but merely require  
8 that it be budgeted before the fact, in the case of the Executive Order, &  
9 paid for after the fact, in the case of Takings Clause. To strengthen the  
10 Executive Order & give it the force of law, Senator Symms introduced his  
11 Private Property Rights Act, S. 50. The Bush Administration strongly supports  
12 S. 50, & the Senate approved the bill last year. The House of  
13 Representatives, however, has not yet even considered the measure. The  
14 proposed legislation states that: No regulation promulgated after the date  
15 of enactment of this Act by any agency shall become effective until the  
16 issuing agency is U.S.C. 4654(c), those who succeed in obtaining an  
17 award of compensation for the taking of property by a federal agency  
18 also receive, as part of their award, reimbursement for any "reasonable  
19 costs, disbursements, & expenses, including reasonable attorney,  
20 appraisal, & engineering fees," that they are forced to incur in order to  
21 obtain their compensation from the government. 136 Cong. Rec. S 10917  
22 (daily edition, July 27, 1990) (statement of Senator Wallop). Specifically,  
23 the EPA opposed adoption of the Executive Order, attempted to soften its  
24 requirements as much as possible, attempted to soften the guidelines for  
25 implementing the Executive Order, & actively lobbied against legislation  
26 aimed at reinforcing the Executive Order until the Administration had  
27  
28

officially endorsed the legislation. Certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such taking where possible. This language would prevent any new regulation from taking effect unless the agency issuing the regulation: 1) has adopted procedures for assessing the potential impact of its regulatory activity on private property, as required by the Executive Order; & 2) has had its compliance with the applicable procedures certified by the Attorney General. Not only would the Symms bill force the bureaucracies to take the Executive Order more seriously by putting conditions on their ability to regulate, but it would make permanent the protection afforded to private property by the Executive Order. Executive departments & agencies would not be able to regulate until the Attorney General had certified their compliance with the applicable procedures for assessing the impact of regulatory activity on private property. & the Attorney General cannot certify such compliance if such procedures do not exist. Therefore, no subsequent President could rescind the Executive Order without replacing it with something equivalent. By making the bureaucrats' ability to regulate conditional upon their compliance with the Executive Order, or with any similar procedures that might be adopted in the future, the legislation proposed by Senator Symms would give regulators an incentive to respect private property rights. **HOLDING AGENCIES ACCOUNTABLE:** The Symms bill, however, goes only part way in defending the Fifth Amendment. To prompt regulators to take the greatest care when regulating property, for example, a bill could require all just compensation awards to come out of

1 the budget of the agency or department that had imposed the  
 2 regulations. Currently all such judgments come out of a "Judgment Fund"  
 3 appropriated separately from any individual agency's or department's  
 4 budget. The Executive Order requires the Office of Management &  
 5 Budget to "take action to ensure that all takings awards levied against  
 6 agencies are properly accounted for in agency budget submissions." But  
 7 this requirement is not binding on Congress & may be repealed by the  
 8 President at any time. Last year the Bush Administration proposed  
 9 legislation that would require agencies & departments to reimburse the  
 10 Judgment Fund out of their individual budgets, but no Representative or  
 11 Senator has yet introduced the Administration's bill. 35 S. 50, 102nd Cong.,  
 12 1st Sess. 3 (1991).

### 14 **THIRD CAUSE OF ACTION**

#### 15 **Municipal and Supervisory Liability (42 U.S.C. § 1983)**

#### 16 **(By Plaintiff Against San Bernardino County Building & Safety Department)**

17 24. Plaintiff hereby re-alleges and incorporates by this reference, as though  
 18 set forth in full, the allegations in paragraph 1 through 23, inclusive.

19 25. On and for some time prior to 2021 (and continuing to the present date)  
 20 Defendants San Bernardino County Building & Safety Department  
 21 deprived Plaintiff Lynn Macy of the rights and liberties secured to them by  
 22 the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, in that said  
 23 Defendants and their supervising and managerial employees, agents,  
 24 and representatives acting with gross negligence and with reckless and  
 25 deliberate indifference to the safety, rights, and liberties of the public in  
 26 general and of Plaintiff Lynn Macy, and of persons in their class, situation  
 27

1 and comparable position, in particular, knowingly maintained, enforced  
2 and applied an official recognized custom, policy, and practice of:

3 (a) Employing and retaining as county officials and other personnel,  
4 including San Bernardino County Building & Safety Department  
5 at all times material herein knew or reasonably should have  
6 known had propensities for abusing their authority and for  
7 mistreating citizens by failing to follow their County Policies;

8 (b) Inadequately supervising, training, controlling, assigning and  
9 disciplining San Bernardino County Building & Safety Department  
10 and other personnel, each knew or in the exercise of reasonable  
11 care should have known the aforementioned propensities and  
12 character traits;

13 (c) Maintaining grossly inadequate procedures for reporting,  
14 supervising, investigating, reviewing, controlling and disciplining  
15 the intentional conduct by San Bernardino County Building &  
16 Safety Department and other personnel.

17 (d) Failing to adequately train Defendants San Bernardino County  
18 Building & Safety Department and failing to institute appropriate  
19 policies regarding constitutional procedures and practices;

20 (e) Having and maintaining an unconstitutional policy, customs,  
21 procedures of using excessive trespassing which is also  
22 demonstrated by inadequate training regarding these subjects.  
23

24 26. Defendants San Bernardino County Building & Safety Department had  
25 either actual or constructive knowledge of the deficient policies,  
26 practices, and customs alleged in the paragraphs above. Despite having  
27 knowledge as stated above these Defendants condone, tolerated, and  
28

1 through actions and inactions thereby ratified such policies. Said  
2 Defendants also acted with deliberate indifference to the foreseeable  
3 effects and consequences of these policies with respect to the  
4 constitutional rights of Plaintiff Lynn Macy and other individuals similarly  
5 situated.

6  
7 27. By perpetrating, sanctioning, tolerating and ratifying the outrageous  
8 conduct and wrongful acts, Defendants San Bernardino County Building &  
9 Safety Department acted with intentional, reckless, and callous disregard  
10 for the safety and constitutional rights of Plaintiff Lynn Macy. Defendants  
11 San Bernardino County Building & Safety Department actions were willful,  
12 wanton, oppressive, malicious, fraudulent, extremely offensive, and  
13 unconscionable to any reasonable person of normal sensibilities.

14 28. By reason of the aforementioned policies and practices of Defendants  
15 San Bernardino County Building & Safety Department acted with  
16 intentional, reckless and callous disregard for the safety and constitutional  
17 rights of Plaintiff Lynn Macy. Defendants San Bernardino County Building &  
18 Safety Department caused Plaintiff Lynn Macy incurred damages in the  
19 form of psychological and emotional injuries, including, without limitation,  
20 pain and suffering, sleep deprivation, humiliation, all of which are  
21 continuing and damaging to reputation. Plaintiff's actual damages will be  
22 ascertained at trial.

23 29. The policies, practices, and customs implemented and maintained and  
24 still tolerated by Defendants San Bernardino County Building & Safety  
25 Department acted with intentional, reckless and callous disregard for the  
26 safety and constitutional rights of Lynn Macy. Defendants San Bernardino  
27

County Building & Safety Department were affirmatively linked to and were significantly influential forces of Plaintiff Lynn Macy.

#### **FOURTH CAUSE OF ACTION**

##### **Intentional Infliction of Emotional Distress**

##### **(By Plaintiff Against San Bernardino County Building & Safety Department)**

30. Plaintiff hereby re-alleges and incorporates by this reference, as though set forth in full, the allegations in paragraph 1 through 29, inclusive.

31. Plaintiff are informed and believe and thereon alleges that Defendants' actions described in this Complaint were intentional, extreme, and outrageous. Defendants are extorting Plaintiff, and restricting the Use of Land of Plaintiff, which caused Plaintiff a great deal of emotional distress.

32. Plaintiff are further informed and believe and hereon alleges that such actions were done with intent to cause serious emotional distress and were done with reckless disregard of the probability of causing Plaintiff serious emotional distress.

33. As a proximate result of the Defendants actions Plaintiff Lynn Macy incurred damages in the form of psychological and emotional injuries, including, without limitation, pain and suffering, sleep deprivation, humiliation, all of which are continuing and damaging to reputation. Plaintiff's actual damages will be ascertained at trial.

34. The conduct of the Defendants was despicable, malicious, wanton, oppressive and accomplished with a conscious disregard for Plaintiff Lynn Macy's rights, entitling Plaintiff Lynn Macy to an award of exemplary and punitive damages. Defendants only goal against Plaintiff were for monetary gain.

1       **WHEREFORE**, Plaintiff's pray judgment against Defendants as follows:

- 2       1. For compensatory damages in an amount to be proven at trial;
- 3       2. For treble damages pursuant to the Bane Act;
- 4       3. For punitive damages on those claims where it is available pursuant to law
- 5       in an amount sufficient to punish, deter and make an example of the
- 6       Defendants;
- 7       4. For interest on those claims where it is available under law;
- 8       5. For cost of suit; and
- 9       6. For such other and further relief as this Court may deem to be just and
- 10      proper.
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28